



## **SUMMARY**

The fundamental principle of Section 222 of the new Telecommunications Act of 1996 is that every telecommunications carrier has a duty to protect the confidentiality of all proprietary information related to its customers and to other competing telecommunications carriers. Congress has also indicated that Section 222 is intended to balance competitive and consumer privacy interests with respect to CPNI. The Commission must adopt rules in this proceeding which fully implement Congress' intent.

At the same time, the Commission cannot overlook the salient fact that dominant ILECs, based solely on their traditional monopoly role in the local exchange and access markets, have unfettered access to all the CPNI of their local exchange customers, including their competitively-valuable and highly sensitive long distance CPNI. By contrast, IXC's have no access to local service CPNI. By definition, this information extends to critical data such as the quantity, configuration, type, destination, and amount of use of a telecommunications service by an individual customer. No competing carrier can hope to match the ubiquitous and all-inclusive nature of this proprietary information, which has been gathered without the informed consent of end user customers. Thus, while all carrier customers have been granted statutorily-guaranteed privacy rights in their CPNI, the CPNI controlled by the dominant ILECs is both far more valuable and far more vulnerable to misuse. Given this crucial disparity between ILECs and other telecommunications service providers, the Commission should target its rules to the CPNI collected and controlled by the dominant ILECs in their privileged monopoly role as provider of local exchange and access services.

The Commission seeks comment on several important issues. First, LDDS WorldCom believes that Section 222 does not permit the states to impose additional CPNI

requirements beyond those adopted by the Commission. Neither the text nor the legislative history of Section 222 appears to allow the states such a role, and the statute does not overturn the Commission's successful use of its Computer III preemption authority under the 1934 Act to prohibit the states from adopting inconsistent CPNI rules.

Second, the Commission asks for comments on the appropriate meaning of the statutory definition of "telecommunications service." LDDS WorldCom strongly opposes one proposed interpretation that would equate this term with the total universe of all basic telecommunications services provided by a carrier. Such an exceedingly broad reading would completely eviscerate the consumer's rights, and would be inconsistent with the specific language used in the statute. Instead, LDDS WorldCom agrees with the Commission's proposed interpretation of Section 222(c)(1) to prohibit a carrier from using CPNI obtained from the provision of one service for marketing or other purposes in connection with the provision of another service.

The Commission next seeks comment on its tentative conclusion that Section 222 distinguishes among telecommunications services based on the traditional service distinctions of local service, interexchange service, and commercial mobile radio satellite services. LDDS WorldCom believes that the new Act gives the Commission discretion in defining the exact parameters of a telecommunications service for purposes of implementing Section 222. Although the three proposed service categories do comport accurately to traditional service demarcations, over time regulatory and technological changes inevitably will erode these distinctions. At minimum, however, the ILECs' wireline local exchange network will remain in place as a ubiquitous monopoly for many years. Thus, unless and until the Commission in

the future uses its forbearance authority under Section 10 of the Act to refrain from enforcing regulation of the ILECs' local exchange and exchange access services, the Commission should focus its service definition on the local exchange and access services provided by the dominant ILECs. Thus, the ILECs should not be allowed to use CPNI acquired from their local exchange operations and provide it to any other affiliate or related business enterprise that provides non-local exchange services.

The Notice next turns to the issue of the customer notification and authorization necessary for a carrier to utilize CPNI. LDDS WorldCom strongly agrees with the Commission's tentative conclusion that carriers should notify customers of their rights to restrict access to their CPNI, and supports a written notification requirement. LDDS WorldCom believes that all customer authorization also must be in writing, so that a greater degree of protection of CPNI is offered both to the customer and to the carrier itself. Should the FCC decide nevertheless that oral notification and/or authorization is sufficient under the statute, the Commission should extend that finding only to nondominant non-ILECs, given the unique value and vulnerability of local service-related CPNI.

Finally, LDDS WorldCom supports the Commission's tentative conclusion that its Computer III CPNI rules should not extend to other, nondominant carriers because there is no demonstrated need to apply those rules to any nondominant carriers, including AT&T, at this time. Because the RBOCs are clearly dominant in their provision of local exchange services, however, their control of valuable and vulnerable CPNI should be subject to additional rules under Computer III.

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network Information	)	
and Other Customer Information	)	

**COMMENTS OF LDDS WORLDCom**

WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its comments in response to the Notice of Proposed Rulemaking ("Notice"), FCC 96-221, released by the Commission on May 17, 1996 in the above-referenced proceeding. As one of the four largest facilities-based interexchange carriers ("IXCs") in the United States, LDDS WorldCom has a substantial interest in the outcome of this proceeding.

**I. INTRODUCTION**

Under Section 222 of the recently-enacted Telecommunications Act of 1996,<sup>1</sup> Congress established a new set of requirements pertaining to the use of customer proprietary network information ("CPNI").<sup>2</sup> The statute defines CPNI broadly as "information that relates to the quantity, technical configuration, type, destination, and amount of use of a

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996), to be codified at 47 U.S.C. §§ 151 et seq. ("1996 Act"). For the sake of clarity, LDDS WorldCom will cite to the provisions of the 1996 Act referencing the specific sections at which they will be codified.

<sup>2</sup> 1996 Act, Section 222.

telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier of the customer solely by virtue of the carrier-customer relationship," as well as "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier."<sup>3</sup> Section 222 of the 1996 Act directs that, as a general matter, "[e]very telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers...."<sup>4</sup>

The rest of Section 222 sets out certain obligations imposed on all telecommunications carriers, and certain rights possessed by all customers of telecommunications carriers, regarding the use of CPNI. Section 222(c)(1) states that:

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.<sup>5</sup>

Section 222(c)(2) provides that "[a] telecommunications carrier shall disclose [CPNI], upon affirmative written request by the customer, to any person designated by the customer."<sup>6</sup> The Act delineates three exceptions to the general prohibition established in Section 222(c)(1).<sup>7</sup>

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<sup>3</sup> 1996 Act, Section 222(f)(1).

<sup>4</sup> 1996 Act, Section 222(a).

<sup>5</sup> 1996 Act, Section 222(c)(1).

<sup>6</sup> 1996 Act, Section 222(c)(2).

<sup>7</sup> 1996 Act, Section 222(d).

**II. THE FCC MUST ADOPT A CPNI POLICY THAT PROPERLY IMPLEMENTS CONGRESS' INTENT TO FOSTER CONSUMER PRIVACY INTERESTS AND PREVENT ANTICOMPETITIVE ABUSE OF HIGHLY VALUABLE CUSTOMER INFORMATION, ESPECIALLY BY THE INCUMBENT LECs**

Although LDDS WorldCom believes that the general thrust of the Notice, and many of the proposals contained therein, are relatively faithful to the text of the statute, the Commission must ensure that its new rules also encompass the spirit of the statute. The first principle of Section 222 is that every telecommunications carrier has a duty to protect the confidentiality of all proprietary information related to its customers and to other competing telecommunications carriers.<sup>8</sup> Moreover, Congress fully intended that new Section 222 of the Communications Act "balance both competitive and consumer privacy interests with respect to CPNI."<sup>9</sup> In interpreting the meaning of the words in the statute, then, the Commission must hold fast to Congress' overriding concern for protection of the privacy interests of a carrier's customers and competitors alike.

While the text of Section 222 refers to the duty of "every" telecommunications carrier to protect its customers' and competitors' CPNI, there is one crucial distinction that cannot be overlooked. Because of their long-standing historical relationship with all customers and long distance competitors in their regions -- based solely on their traditional monopoly role in the local exchange and access markets -- dominant incumbent local exchange carriers ("ILECs"), such as the Regional Bell Operating Bell Companies ("RBOCs"), have unfettered access to the CPNI of all customers within their local service territories. The CPNI possessed

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<sup>8</sup> 1996 Act, Section 222(a).

<sup>9</sup> Conference Report at 88.

by the ILECs not only includes local data stemming from the ILECs' provision of local exchange service to end users, but also long distance CPNI derived from the ILECs' provision of exchange access to IXC's. As the statutory definition shows, this data includes the "quantity, technical configuration, type, destination, and amount of use of" long distance services by an IXC's customers, as well as those long distance services for which the ILEC bills.<sup>10</sup> The ubiquitous and all-inclusive nature of this proprietary information that ILECs alone are able to collect from customers and potential local and long distance competitors has significant commercial value which no other competing carrier can hope to duplicate. Moreover, those ILECs' end user and carrier customers generally cannot be considered a voluntary party to this "carrier-customer relationship " or to the ILEC's subsequent access to their CPNI, because these customers had -- and continue to have -- no other choice but to use the only ILEC available at their location. In marked contrast, customers of IXCs and other competitive, nondominant companies actually decide to become customers of a particular carrier by choice, and have voluntarily ceded control of their CPNI to these carriers as a form of implied consent.

Thus, while all customers of all carriers have statutorily-guaranteed privacy rights in their CPNI, in practical terms the CPNI controlled by the dominant ILECs is both far more valuable (because of the all-inclusive data concerning all customers and potential long distance competitors), and far more vulnerable to misuses not condoned by the underlying customer (because customers have not voluntarily allowed the ILECs to possess and utilize that data). Given this crucial disparity, the Commission should focus its attention largely on the CPNI collected and controlled by the dominant ILECs in their privileged capacity as provider of local

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<sup>10</sup> 1996 Act, Section 222(f)(1).

exchange and access services, and target its rules especially to protect the ILECs' customers and competitors.

Despite the explicit statutory dictate to protect the CPNI of customers and competitors, and despite the wholly unique value and vulnerability of CPNI possessed by the dominant ILECs, it is likely that some parties in this proceeding may urge the adoption of federal rules which do not offer ILEC customers or competitors an adequate ability to prevent the unlawful utilization of their proprietary information. In formulating the rules to apply to CPNI controlled by the dominant ILECs, LDDS WorldCom urges the Commission to safely err on the side of protecting against the distribution or misuse of an ILEC customer's CPNI.

**III. THE COMMISSION SHOULD ADOPT FEDERAL RULES THAT REQUIRE, AT MINIMUM, WRITTEN NOTIFICATION AND AUTHORIZATION BEFORE AN INCUMBENT LEC CAN USE LOCAL SERVICE-RELATED CPNI FOR ANY OTHER PURPOSES**

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**A. The FCC Has Plenary Jurisdiction Over CPNI Matters Under The Telecommunications Act**

The Notice first observes that the Commission's current CPNI rules, which predate the 1996 Act, have preempted the states from adopting any inconsistent standards in this area, and that the courts have upheld the Commission's exercise of its preemption authority.<sup>11</sup> The Notice asks whether Section 222 of the new statute permits the states to impose additional CPNI requirements beyond those adopted by the Commission.

Section 222 does not refer to the states at all, or mention any jurisdictional separation of telecommunications services. The legislative history is also silent on the issue.

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<sup>11</sup> Notice at para. 16.

The implication is that the FCC has been granted plenary jurisdiction to adopt federal CPNI rules that must apply to all interstate and intrastate services. This conclusion is bolstered by the fact that the Commission already has successfully used its preemption authority under the 1934 Act to preempt the states from adopting inconsistent CPNI rules. If Congress had intended to reverse that preemption, the statute certainly could have been drafted to do just that. It was not. Moreover, any attempt to reconcile a federal CPNI rule for interstate services with fifty-one potentially different rules for intrastate services will be an administrative and technical nightmare for the hundreds of national and regional telecommunications carriers that must abide by the CPNI requirements of the statute. Thus, the statute does not appear to allow the states to impose additional or different CPNI requirements, especially concerning critical issues such as whether to allow oral notification or authorization, or how to define "telecommunications service" under the Act. That role properly belongs solely to the Commission.

**B. For Now, The Term "Telecommunications Service" Can Be Interpreted As Referring To The Traditional Category Of Service From Which CPNI Has Been Derived**

Absent prior customer notification, a telecommunications carrier is entitled to use that customer's CPNI obtained "by virtue of its provision of a telecommunications service" only to provide "the telecommunications service from which such information is derived," or services used in "the provision of such telecommunications service...."<sup>12</sup> The Commission asks for comments on the appropriate meaning of the statutory definition of "telecommunications service"

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<sup>12</sup> 1996 Act, Section 222(c)(1).

as contained in Section 222(c)(1).<sup>13</sup>

LDDS WorldCom strongly opposes the proposed interpretation of at least one RBOC that the term "telecommunications service" broadly includes the total universe of all basic telecommunications services provided by a carrier.<sup>14</sup> Such an exceedingly broad reading would completely eviscerate the consumer's rights because telecommunications service providers, without prior customer approval, could use CPNI obtained from any one telecommunications service to market any other telecommunications service. That cannot be so. The words of the provision in question speak only of CPNI from "a" single type of telecommunications service being used for "the" same "such" type of telecommunications service. If Congress had intended the overly generous interpretation suggested by some, much broader language would have been used. Thus, LDDS WorldCom agrees with the Commission's proposed interpretation of Section 222(c)(1) "to prohibit a carrier from using CPNI obtained from the provision of one service for marketing or other purposes in connection with the provision of another service."<sup>15</sup>

The Commission next seeks comment on its tentative conclusion that "it would be reasonable to interpret Section 222 as distinguishing among telecommunications services based on traditional service distinctions," namely, local (or intraLATA) service, interexchange (or interLATA) service, and commercial mobile radio satellite ("CMRS") services.<sup>16</sup> Under this proposal, intraLATA (or "short-haul") toll would be treated as local service when provided

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<sup>13</sup> Notice at para. 20.

<sup>14</sup> Notice at para. 1 n.5.

<sup>15</sup> Notice at para. 21.

<sup>16</sup> Notice at para. 22.

by a LEC, and as interexchange service when provided by an IXC. The Commission asks commenters to address how these proposed distinctions will be affected by "changes in telecommunications technology and regulation that allow carriers to provide more than one traditionally distinct service...."<sup>17</sup>

LDDS WorldCom believes that the new Act gives the Commission some discretion in defining the exact parameters of a "telecommunications service" for purposes of implementing Section 222. Although the three categories of service outlined in the Notice do comport correctly to traditional service demarcations now in use, LDDS WorldCom shares the Commission's concern that, over time, as the new statute is implemented, regulatory and technological changes inevitably will erode the current distinctions. However, LDDS WorldCom believes that, at minimum, the ILECs' wireline local exchange network will remain in place as a ubiquitous monopoly for an extended period of many years. Certainly, unless and until the Commission determines in a future proceeding under Section 10 of the new Act that it should forbear from applying continued regulatory oversight of an ILEC's local exchange and exchange access services, the Commission should focus its service definition, and its regulatory energies, on the local exchange and access services provided by that dominant ILEC. Under this approach, the ILEC cannot use CPNI acquired from its local exchange operations and provide it to any other affiliate or related business enterprise that provides non-local exchange services.

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<sup>17</sup> Notice at para. 22.

**C. Prior Customer Notification And Authorization To Use CPNI Must Be In Writing**

The Notice next turns to the issue of the customer notification and authorization necessary for a carrier to utilize CPNI. The Commission notes that the Act "does not specify the procedures that a carrier must use to obtain customer approval, nor whether approval must be written or oral."<sup>18</sup> The Notice seeks comment on "what methods carriers may use to obtain customer authorization for use of CPNI in compliance with the statute."<sup>19</sup>

LDDS WorldCom strongly agrees with the Commission's tentative conclusion that carriers should notify customers of their rights to restrict access to their CPNI. A federally-granted right to restrict or deny parties access to one's CPNI is largely meaningless if a customer has no prior knowledge that such a right actually exists. The Commission also asks whether that notification should be allowed to be given verbally, or in an advance written notification.<sup>20</sup> LDDS WorldCom believes that only prior written notice is sufficient to fully communicate to customers all pertinent aspects of the new federal right to restrict or deny access to CPNI. A carrier can readily use a letter or billing insert as "the least burdensome method of notification,"<sup>21</sup> and as a means of informing customers of its desire to use their CPNI for purposes unrelated to the provision of the service from which it was obtained. The Commission itself recognizes that, "[f]rom a consumer protection standpoint, written notification, which is

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<sup>18</sup> Notice at para. 27.

<sup>19</sup> Notice at para. 27.

<sup>20</sup> Notice at para. 28.

<sup>21</sup> Notice at para. 28.

more specific and verifiable than oral notification, may be preferable."<sup>22</sup> To minimize any possibility of customer confusion or misunderstanding, and resulting consumer complaints to the FCC, the Commission also should specify the information that carriers must include in their customer notifications.

The Commission also asks whether Section 222(c)(1) allows carriers to choose to use outbound telemarketing programs to obtain oral approval from customers for use of their CPNI, or whether such approval must be written.<sup>23</sup> LDDS WorldCom believes that all customer authorization must be in writing. The Commission put it best when it stated in the

Notice:

Written authorization provides greater protection to both customers and the carrier than oral authorization, in that the former advises customers in writing of their CPNI rights and provides the carrier with evidence that it has obtained customer approval.<sup>24</sup>

As indicated above, the statute stresses that protection of a customer's CPNI is the first and primary principle. In fact, written authorization from the customer is expressly required by Section 222(c)(2) where the customer seeks to have CPNI disclosed to a third party.<sup>25</sup> In addition, the Commission has recognized the importance of written authorizations in the context of its rules governing changes in a customer's selection of presubscribed interexchange carrier, where written verification is necessary to ensure that both customers and carriers agree that a

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<sup>22</sup> Notice at para. 29.

<sup>23</sup> Notice at paras. 30-32.

<sup>24</sup> Notice at para. 30.

<sup>25</sup> 1996 Act, Section 222(c)(2).

valid change has actually taken place.<sup>26</sup> Written authorization will help guarantee the same result in the context of CPNI.

Should the FCC decide nevertheless that oral notification and/or authorization is sufficient under the statute, LDDS WorldCom urges the Commission to extend that finding only to nondominant non-ILECs. As indicated above, a customer's privacy interest in his or her CPNI is significantly heightened when that CPNI is acquired and controlled by a monopoly or dominant ILEC, rather than a nondominant telecommunications service provider such as an IXC. The unique value and vulnerability of local service-related CPNI should require a more stringent standard of written notification and authorization in order to fully protect the customers' statutory interests in their CPNI.

#### **D. More Stringent CPNI Rules Should Apply To Dominant RBOCs**

Finally, the Commission observes that the CPNI rules adopted in its Computer III proceeding apply only to AT&T, the RBOCs, and GTE. The Commission proposes not to extend those rules to other carriers.<sup>27</sup> The Commission also asks whether competitive advantages possessed by AT&T, the RBOCs, and GTE regarding access to CPNI requires special regulatory treatment<sup>28</sup>

LDDS WorldCom supports the Commission's tentative conclusion that its Computer III CPNI rules should not extend to other, nondominant carriers. The Commission

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<sup>26</sup> See, e.g., 47 C.F.R. § 64.1100 (a) (1995) (Prior written authorization is required from the customer before a valid PIC change can be submitted).

<sup>27</sup> Notice at para. 40.

<sup>28</sup> Notice at para. 42.


originally adopted its Computer III rules because it correctly perceived the need to prevent dominant communications companies from abusing their unique access to critical CPNI. There certainly is no demonstrated need to apply the Computer III rules to any nondominant carriers at this time.

Because AT&T is no longer considered a dominant carrier, AT&T should no longer be held to the Computer III rules. However, because the RBOCs are now and have been totally dominant in their provision of local exchange services, their control of valuable and vulnerable CPNI should be subject to additional rules under Computer III. The statute certainly does not otherwise disturb the CPNI rules adopted under Computer III, and LDDS WorldCom is unaware of any cogent argument why those rules should be relaxed at this time in the case of the RBOCs.

IV. CONCLUSION

The Commission should act in accordance with the recommendations proposed above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. R. Sloan", written over a horizontal line.

Catherine R. Sloan  
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June 11, 1996

**CERTIFICATE OF SERVICE**

I, Cecelia Johnson, hereby certify that I have this 11th day of June, 1996, sent a copy of the foregoing "Comments of LDDS WorldCom" by hand delivery to the following:

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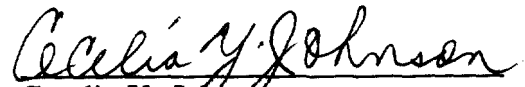
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